



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"Enriching Lives"

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March 1, 2004

TO: Each Supervisor

FROM: James A. Noyes
Director of Public Works

PROJECT ID NO. WRDD000011
SAN GABRIEL DAM AND RESERVOIR SEDIMENT REMOVAL
SUPERVISORIAL DISTRICT 5

Agenda Item 50 on the February 17, 2004, Agenda included an item to award a contract for the removal of sediment from San Gabriel Dam and Reservoir to Barnard Construction Company. At the request of Supervisor Burke, this matter was postponed until March 3, 2004, following receipt of a letter dated February 16, 2004, from Esteban Lizardo, Attorney at Law, protesting the award. Mr. Lizardo represents the Southern California Operating Engineers Contract Compliance Committee (OECCC), a nonprofit organization which monitors public works projects awarded by public agencies.

The OECCC's objections to awarding this contract to Barnard are twofold. First, they contend that Barnard failed to properly complete a form in the bid proposal which requires bidders to provide information on any lawsuits in which their firm was "a named plaintiff or defendant in a lawsuit brought by or against the owner." Their basis for this claim is that Barnard failed to list two lawsuits filed against Barnard by the OECCC regarding the payment of prevailing wages on projects awarded to Barnard by the Los Angeles City Department of Water and Power (DWP). However, since only "lawsuits by or against the owner" are required to be listed, we along with County Counsel have determined that Barnard complied with the requirements of the bid proposal.

The second issue raised by the OECCC is that Barnard has violated California's prevailing wage law on several projects they have or are performing for DWP. Thus, the OECCC concludes that Barnard should be determined to be a nonresponsible contractor and should not be awarded the subject contract. We have discussed this matter with Barnard, the State of California Department of Industrial Relations, Division of Labor Standards (DIR), and County Counsel and have determined that these matters were resolved without any finding of wrongdoing by Barnard. Initial assessments of \$223,475.66 and \$192,952.46 were settled for \$17,004.87 and \$22,393.73, respectively. Based upon information compiled during our investigation, Public Works, Office of Affirmative Action Compliance, Auditor-Controller, and County Counsel do not believe there is sufficient evidence to support a determination of nonresponsibility. Moreover, the payment of prevailing wages is a requirement of our contract, and Barnard will be reminded of the requirement, as well as Office of Affirmative Action Compliance reporting obligations, at our preconstruction meeting. We will also make payroll records available to interested parties upon request and as provided by the Labor Code.

At the request of Supervisor Molina's Office, we reviewed the April 14, 1998, motion by Supervisors Molina and Knabe which called for the establishment of procedures to ensure contracts are awarded to responsible contractors. The award of this contract to Barnard is in total compliance with the policies and procedures established as a result of this motion.

Also, at the request of Supervisor Molina's Office, Public Works and County Counsel reviewed issues relevant to the July 23, 2001, memorandum from the Chief Administrative Officer (CAO) to the Board concerning evaluation of labor law and payroll violations for contracts subject to the living wage. The CAO recommended uniform standards that established a centralized evaluation process to promote uniformity in evaluating the severity and extent of past labor violations made by proposers on County contracts. Public Works and County Counsel determined that the July 23, 2001, memorandum and the uniform standards do not apply to the present contract because it is not a contract for personal services. Rather, the present contract is a construction contract governed by state law. The requirements of Proposition A and the Living Wage Ordinance do not apply to the present contract.

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While Public Works has not previously awarded a contract to Barnard, we have copies of numerous letters of recommendation for previous projects undertaken both in California and in other states. In addition, they have received the Associated General Contractor's Marvin M. Black Excellence in Partnering Award on several occasions. This award is given to contractors who are able to establish particularly productive working relationships with awarding agencies as well as subcontractors and suppliers. The specifications require "partnering" on this project as well. Barnard has also been invited to serve on Mayor Hahn's Blue Ribbon Task Force on Infrastructure.

The San Gabriel Reservoir is a critical element in the flood control system which protects the San Gabriel Valley. It is essential that this project proceed as soon as possible to ensure that flood protection is not jeopardized by the sediment which has accumulated in the reservoir prior to and following the 2002 fires. Barnard is the low bidder on the project and has not committed any act which negatively reflects on their fitness or capacity to perform this job. In addition, other than the labor issues discussed above, we are not aware of any violations or business practices which reflect negatively on their integrity or honesty. Our investigation indicates they are a responsible and responsive company and have met all the requirements contained in the bid proposal as well as the Public Contract Code. Therefore, we recommend award of this contract to Barnard on March 3, 2004.

AD:pb

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cc: Chief Administrative Office
County Counsel
Executive Office